

REMARKS

Reconsideration of this application, as amended, is requested.

Claims 1, 8 and 12-23 remain in the application. Independent claims 1 and 8 have been amended to clarify the invention in view of the very helpful comments of the Examiner in the Advisory Action. Claims 12-17 remain in the application and have not been amended. New dependent claims 18-23 have been added and further define preferred positions of the primary elastic members.

The claims previously existing in this application were finally rejected on September 12, 2006 under 35 USC 103(a) as being obvious over U.S. Patent No. 3,455,303 to Wilson. Claims 8 and 15-17 also were rejected under 35 USC 112, second paragraph. A formal objection also was applied to claims 14 and 17.

An Amendment After Final Rejection was filed on November 15, 2006 to address the rejection under 35 USC 112, second paragraph and to address the formal objection. The November 15, 2006 Amendment After Final Rejection further presented arguments in an effort to distinguish the invention from Wilson.

The Examiner issued an Advisory Action issued on December 20, 2006 to enter the Amendment After Final Rejection. The Examiner noted that the amended claims overcame the formal objections and the rejections under 35 USC 112, second paragraph. However, the Examiner maintained the rejections of claims 1, 8 and 12-17 under 35 USC 103(a) in view of Wilson. The Advisory Action then proceeded with very helpful comments to explain more clearly the reasons for the obviousness rejection. The Examiner accurately summarized applicants' arguments that Wilson does not show attachment of primary elastic members in a stretched state to the absorbent body, but rather merely

shows the elastic members as being threaded through a pair of slits. The Examiner did not dispute those arguments. However, the Examiner explained that "the claim does not require permanent attachment, nor that the elastic members are attached using any particular method such as by gluing." Accordingly, the Examiner explained that the elastic members of Wilson "are attached" to the absorbent body by frictional forces and are attached in their stretched state as they are free to stretch without becoming detached.

The Examiner also accurately summarized the arguments that the raised portion of Wilson is not formed by the action of contractile force due to the attachment of the elastic members in their stretched state, but rather is attributable to the disposition of the pad between the wearer's legs and the looped engagement of the strips with the wearer's body. However, the Examiner explained that "the claim does not require that the position be raised prior to use." The Examiner explained that the raised portion of Wilson is raised by the contractile force of the elastic members in use while the elastic members are attached.

The comments in the Advisory Action would appear to indicate that the Examiner does not disagree with the applicants arguments, but rather merely concludes that the arguments are not commensurate with the scope of the claims that existed in the Amendment After Final Rejection. The Examiner's comments are appreciated and are well taken. Accordingly, each of the independent claims has been amended to define the invention more clearly. It is believed that the Amendment independent claims distinguish more clearly over Wilson and define the invention in terms that are commensurate with the arguments that were presented in the Amendment After Final Rejection. Amended claim 1 defines the disposable wearing article as having "right and left primary elastic members

bonded in their stretched state to at least one cover sheet that is attached to a back portion of said absorbent body." Support for this Amendment is provided in the third full paragraph on page 13 and in the second full paragraph on page 15. These paragraphs explain that the elastic members are attached in their stretched state between the outer sheet and the skin-side sheet, and that this assembly is bonded together in a superimposed manner. It is believed that the term "bonded" presented in the specification and in the amended claims is consistent with the term "gluing" used by the Examiner in the attachments to the Advisory Action. Wilson has absolutely no suggestion of bonding elastic members at all, and certainly no suggestion of bonding elastic members in a stretched state. In fact, such a bonded attachment would be inconsistent with the teaching of Wilson which merely requires the elastic strips to be threaded through slits to facilitate adjustments in accordance with the preferences of the wearer.

The claims have been amended to emphasize that portions of the absorbent body between the approximately linear portions of the primary elastic members are "formed as a raised portion by an action of a contractile force in said approximately linear portion and independent of any forces exerted by a wearer." It is believed that this amended portion of each of the independent claims helps to distinguish further over Wilson which appears to create the raised portion entirely by forces exerted by the wearer.

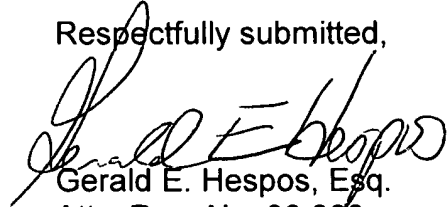
In view of the preceding amendments and remarks, it is submitted that the amended independent claims are patentable over Wilson.

The new claims distinguish even further from Wilson. The Wilson elastic strips are required to be threaded through slits and any "attachment" would be achieved by the mechanical forces exerted at and possibly between the slits. The Wilson arrangement

clearly would not work if substantially all of the elastic members were on an outer surface of the pad or between two layers as set forth in new claims 18-21. The Wilson elastic strips arguably diverge at front and rear portions. However, this diverging configuration extends entirely away from the surface of the pad. Hence, the Wilson diverging portions could not possibly contribute to a contractile force at these locations for forming a raised portion at these locations as set forth in new claims 22 and 23.

The Examiner will appreciate that the prosecution of a patent application often reaches the point where discussions will be more productive than further exchanges of written communications. It is believed that the currently amended claims are patentable over the applied art. However, counsel will make himself available at the convenience of the Examiner for either a telephone interview or a personal interview to expedite the prosecution of this application.

Respectfully submitted,



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